

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GARY ZIERKE, JR.,

Defendant.

4:08-CR-3067

ORDER

The defendant has filed another motion to reduce his sentence. [Filing 436](#). The Court will deny that motion.

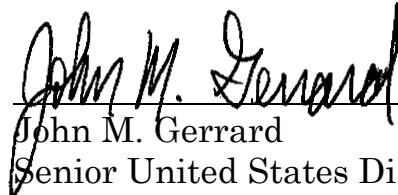
The Court has already reviewed and rejected the defendant's arguments regarding career offender status, and rejects them again for the same reasons. See [filing 435 at 4-6](#). The defendant also makes what seems to be a new argument about "violation of a stipulated agreement" in which he claims that the two-level enhancement to the offense level for obstruction of justice was improperly applied because of a purported "stipulation" that the defendant wouldn't face further punishment for the phone call underlying the enhancement in exchange for permitting the call to be played to the jury at trial. [Filing 436 at 3](#). But the Court can find no such stipulation in the record, and the phone call at issue was actually admitted into evidence over the defendant's objection. See [filing 133 at 178-89](#); see also *United States v. Zierke*, 618 F.3d 755, 758-59 (8th Cir. 2010). And finally, the defendant argues that his sentence is unjust because he was held accountable for 50 grams of actual methamphetamine. [Filing 436 at 4-5](#). But his sentence was actually calculated based on 629 grams of methamphetamine mixture. [Filing 144 at 8](#).

The defendant also requests that counsel be appointed to pursue these claims. [Filing 436](#). Finding no colorable merit to the defendant's claims, the Court will deny appointment of counsel.

IT IS ORDERED that the defendant's motion to reduce sentence ([filing 436](#)) is denied.

Dated this 4th day of November, 2024.

BY THE COURT:



John M. Gerrard
Senior United States District Judge